IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

WEDNESDAY, THE 12TH DECEMBER 2007 / 21ST AGRAHAYANA 1929

CRP.No. 1094 of 2007()

E.P.1319/06 IN OS. 2620/1997 OF IIIRD ADDL. MUNSIFF COURT, THRISSUR.

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REVN. PETITIONER: RESPONDENT/JUDGMENT DEBTOR

DOMINIC, ASSISTANT SUB INSPECTOR OF POLICE, S/O CHIVIDAN ANTHONY, CHEROOR ROAD, CHEMBUKKAVU, THRISSUR DISTRICT.

BY ADV. SRI.K.B.MOHANDAS

RESPONDENTS: PETITIONER/DECREE HOLDER

T.J.SHAJU, S/O NAMBALATH ANGADI THATTIL JOHNY, NELLIKKUNNU DESOM, OLLUKKARA VILLAGE, THRISSUR TALUK.

THIS CIVIL REVISION PETITION HAVING COME UP FOR ADMISSION ON 12/12/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

M.N.KRISHNAN, J

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C.R.P. No.1094 OF 2007

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Dated this the 12th day of December 2007

O R D E R

This revision petition is preferred against the order of the III Addl.Munsiff's Court, Thrissur in E.P.No.1319 of 2006 in O.S.No.2620 of 1997. The court below found that the judgment debtor is having sufficient means to pay and he is refusing to pay the amount and therefore ordered issuance of arrest warrant against him. The judgment debtor is an Asst.Sub Inspector of Police. It is submitted by him that both his children are studying and a considerable amount is spent for their education and his carry home salary is less than Rs.3,000/- and therefore some indulgence must be shown and he must be permitted to pay the amount in instalments.

2. on the other hand, the decree holder would contend that he is having residential building at Chembukavu and his wife is employed as a teacher and so there is means for the person to pay the decree debt. Learned counsel for the petitioner would submit that the house does not belong to him and he had stated so in the cross examination, though such an averment is there in the chief affidavit. It is also seen that one of his children is

studying for M.B.A. and the other for commerce graduation. The salary certificate would show that almost an amount of Rs.7,850/-out of Rs.10,000/- is being recovered towards loan due to the banks and the co-operative societies. It is submitted that the carry home salary is only Rs.2,750/- and therefore there is no intentional evadement of making any payment. There appears to be considerable force in the said contention. But, at the same time it is also to be thought of that the decree holder is in the veranda of the court for the last one decade to get back his money. Since there is an intention for the judgment debtor to pay the decree amount and as Rs.50,000/- had already been attached from the salary for 25 months, I feel some indulgence can be shown and he can be directed to pay the balance amount in instalments.

Therefore the C.R.P. is disposed of as follows:(1) The petitioner is directed to pay the balance decree amount in 9 equal monthly instalments commencing from 15.1.2008.(2) In case of default of payment of the first instalment or the default of two consecutive instalments thereafter, the benefit granted to him shall stand cancelled and the decree holder can proceed to execute the decree by requesting the court to send him in civil prison. (3) In order to enable him to make the payment as ordered above, the court shall recall the warrant of arrest and no fresh arrest need be ordered

till that period.

M.N.KRISHNAN, JUDGE

Cdp/-